

PROCEEDINGS

of a

MILITARY COURT FOR THE
TRIAL OF WAR CRIMINALS

held at

LUNEBURG, GERMANY

on

MONDAY, 17 SEPTEMBER, 1944

upon the trial of

JOSEF KRAMER

and

44 others

(FIRST DAY)

Transcript of the Official Shorthand
Notes.

Vol. II (1)

At 1030 hours the trial commences.

The Order convening the court is read.

The names of the president and members of the court are read over in the hearing of the accused and they severally answer to their names.

The president, members and judge advocate are duly sworn.

The shorthand writers are duly sworn.

The interpreters are duly sworn.

The prosecutor is Col. T.M. BACKHOUSE, TD., of the Legal Staff, Headquarters, British Army of the Rhine, assisted by Major H.G. MURTON-NEALE, R.A.

The defending officers are Major WINWOOD, RA., (Solicitor) who defends accused No. 1 (Kramer), 2 (Klein), 3 (Weingartner) and 4, (Kraft).

Major A.S. MUNRO, RASC., (Solicitor) who defends accused No. 5 (Hoessler), 6 (Borman), 7 (Volkenrath) and 8 (Ehlert).

Major L.S.W. CRANFIELD, HAC., (Solicitor) who defends accused No. 9 (Gresc), 10 (Lotho), 11 (Lobauer) and 12 (Klippel).

Capt. D.F. ROBERTS, R.A. (Solicitor) who defends accused No. 14 (Schmedidzt) and 16 (Frazich).

Capt. C. BROWN, R.A., (Solicitor) who defends accused No. 17 (Gura), 18 (Mathos), 19 (Calleson) and 21 (Egersdorf).

Capt. J.H. FIELDEN, R.A., (Solicitor) who defends accused No. 22 (Pinchen), 23 (Otto) and 25 (Stofel).

Capt. E.W. CORBALLY, Cameronians, (Barrister) who defends accused No. 26 (Schreirer), 27 (Dor), 28 (Barsch) and 29 (Zoddel).

Capt. A.H.S. NEAVE, Black Watch, (Solicitor) who defends accused No. 30 (Schlomoivicz), 31 (Forster, Ida), 32 (Forster, Ilse) and 35 (Opitz).

Capt. J.R. PHILLIPS, R.A., (Barrister), who defends accused No. 36 (Klein), 37 (Bothe), 38 (Walter) and 39 (Haschke).

Lt. J.M. BOYD, R.A., (Solicitor), who defends accused No. 40 (Fifst), 41 (Sauer), and 42 (Lisigwitz).

Capt. D.E. MUNRO, Gordon Highlanders, (Solicitor), who defends accused No. 43 (Roth), 44 (Hempel) and 45 (Hahnel).

Lt. A. JEDRZEJOWICZ, Polish Armoured Division, (Polish Master of Laws), who defends accused No. 48 (Staroska), 47 (Polanski), 46 (Kopper), 31 (Ostrowski), 20 (Burggraf) and 32 (Aurdziej).

Vol II (7)

Accused Nos. 13 (Jenner), 15 (Steinmetz) and 24 (Melchor) are unable to be present and their names are accordingly struck out of the charge.

The names of the accused are read over.

The first charge is interpreted to the accused.

The JUDGE ADVOCATE: It was intimated to me by one of the defending officers that he might wish to say something before the accused were actually arraigned. If that is correct and you want to make any application before the accused are asked to plead to this first charge, the court will hear what you have to say.

Major CRANFIELD: I wish to make an application which, by agreement with all the defending officers, is made on behalf of all the accused.

The application falls under two heads. The first part arises out of Rule of Procedure 32 and it is an objection that the charge does not disclose an offence. My application on that is that the right of the defence to make such an objection should be reserved and that the trial should proceed without prejudice to the right to make the objection at a later stage. The grounds on which I make that application will be made clear from the second part of my application.

The second part of my application arises under RP 39. It is an application to the court for assistance in the preparation of the defence. I make both parts of my application together because they are inter-related. I think it is more convenient to deal with them now although under RP 39 this application should be made after the plea and not before.

The defending officers commenced work, under the aegis of 43 Division, on 7 September. A request was at once made for the attendance of an officer from the JAG's Department and it was arranged that he should attend on Monday, 10 September. The week-end was spent by the defending officers in going through the papers and interviewing the accused. On Monday a conference of defending officers was held and subsequently a meeting was held which was attended by an officer from the JAG's Department and by the Staff Captain 'A' of 43 Division. At that meeting the defending officers made certain requests for assistance and as a result a letter was despatched by 43 Division to 30 Corps District. I think it will be of assistance if I supply copies of the letter to the members of the court and to the prosecutor. (Handed).

The material passages start at para 1(a)(i). The first request of the defending officers was to be allowed to seek the services of a British expert on international law and also a Belgium expert, whose name was sent forward by the defending officers. Para 2 deals with the method by which it was suggested that might be done and para 3 states that the expense should be borne by the public. Para 4 is immaterial and para 5 is a request that the defence be supplied with legal books, again at the public expense, together with certain documents and publications material to the matter at issue.

The request for an expert on international law has become one of the major points in the preparation of the defence. That letter, dated 10 September, was forwarded to 30 Corps District by special D.R., preceded by a telephone

Vol II (1)

message giving the gist of what was required. It went from 30-C-1 District to the Rhine Army on the morning of 11 September. On 12 September a reply was received, by telephone, stating that there was no objection to a defending officer going to UK to obtain the books which were required, but that it could not be done at the public expense. It was further stated that a legal expert, either from UK or Belgium, could not appear at the trial because there were no means of paying his expenses, but that Brig. Wilberforce would be made available. This offer was accepted and a defending officer left for England by air that day to obtain books, under arrangements made by all the defending officers.

Enquiries were then made to ascertain how soon Brig. Wilberforce could come. On 13 September a message - again by telephone - was received stating that Brig. Wilberforce could not appear in court but that he would be available to advise the defence. It was further stated that experts in international law could be brought to the court at the expense of the accused. Therefore we were told first of all that experts could not be brought from England and later that they could be brought, that is, the Rhine Army would provide passages, authorities and so forth, but the fees would have to be paid by the defence. Unfortunately, when this last information was received the defending officers' representative had already gone to London and it was too late for him to enquire whether it was possible to get - as we think it is quite probable we can get - a volunteer expert to come here without remuneration.

In answer to that, the defending officers requested that Brig. Wilberforce should be produced. On the next day, 14 September, a further telephone message was received saying that Brig. Wilberforce could not attend at all and that another officer, a Major Woodhouse, would be made available to advise the defence. Major Woodhouse in fact arrived on 15 September at about four o'clock and stated until yesterday, when, we were informed, he had to leave. Whilst here he was of considerable assistance.

The defence now apply for Prof. Lauterpark of Cambridge University, or failing him, Prof. Brierly of Oxford University, or failing him an English authority on international law to be nominated by Prof. Lauterpark, to be despatched here at the earliest opportunity to advise and assist the defence on matters of international law and, if required by us, to present an argument to the court on behalf of the defence on any points of international law that arise. That is the first matter on which we require assistance.

The JUDGE ADVOCATE: Is it your point that you would like to attack the charge sheet but that you cannot do it until you have had expert advice?

Major CRANFIELD: Yes. We find ourselves in a considerable difficulty in that between us we have very little knowledge of international law. It appears to us that there are some points on international law which arise in this case and we do not know where we are because we have not sufficient knowledge to apply our minds to the points.

We also applied for more ordinary assistance. First of all, we asked for all the plans and photographs referred to in the abstract. You will remember that a set of photographs is exhibited to one of the affidavits in the abstract and also a plan of, I think, Belsen Camp. When the abstract was supplied to the defence those photographs and the plan were missing. One set of photographs was produced but no plan.

W4 II (1)

The JUDGE ADVOCATE: May I interrupt for a moment? Some of your arguments do not seem to me to be a matter for the court at all. Take this last point. Cannot you first of all tell the prosecutor what you want and arrange matters without making an application to the court. If there is something which will help you with your defence and it is available I am sure it will be handed to you at once without any instruction from the court. I do not think you need put these sort of points to the court unless you are having difficulty with the prosecutor. Is there any difficulty, Col. Backhouse?

Col. BACKHOUSE: I have never been asked to supply them.

Major CRANFIELD: We have one set of photographs, but no plan.

Col. BACKHOUSE: The plan does not form part of the abstract. I have no copy of it either. There was exhibited to the affidavit a report; that report does say there is a plan appended, but it never was appended. It is not part of the abstract and we have not got it.

Major CRANFIELD: The reason for making this application now is that we have had difficulty in these matters. We produced our requirements three days after we were originally instructed, i.e., 10 September. It is now 17 September and to a large extent our requirements have not yet been met. Our requests have had to go through 43 Division (whose staff throughout have been most helpful) to 30 Corps and then to the Army of the Rhine. Presumably the return route is through the same channels. We now ask the court to assist in expediting these matters.

Another matter concerns defence witnesses. Here again I think it would be convenient both now and later on if I hand to the court a list of witnesses requested by the defence. (Handed). I do not want the court to be appalled by the length of the list. It is a consolidated list, incorporating all the lists that were at various times put in to 43 Division and transmitted by them to higher authority. The defence is well aware that a number of persons listed here ~~is~~ are not readily procurable and are in fact very much sought after as alleged war criminals. A number of the names are those of witnesses who will be called by the prosecution. There are witnesses here who are vital to the defence and full particulars have been supplied to the authorities, and in some cases of SS personnel who are known to have been taken prisoner, the time and place of their capture and the unit to which they belonged. That was a week ago but they have not yet been produced. I refer in particular to numbers 14 to 21, all of whom are SS personnel captured at Bergen by the British forces. In those cases the name of the unit and date of capture has been supplied. In the case of numbers 56 to 58, the village where they lived and the address has been supplied. I quote those in particular because they are witnesses in the case of one of the accused whose defence will be that he was not there at all and that it is a complete mistake. If we cannot produce those witnesses it is going to be his word against the word (or possibly the affidavit) of the prosecution witness.

Our application in regard to those is that the court should assist us by having the production of the witnesses expedited.

The JUDGE ADVOCATE: The court will do all they can to assist you. I feel sure, however, that I am expressing the view of the court when I say it would be better if you could get in touch with the prosecution and find out from them

whether they can help you. If there is something upon which they cannot or will not help you then I think the court would hear you on that and would be prepared to say: "We will do all we can to help you in your defence". I think the court would like you first of all to consult with the prosecution to see whether everything has been done to get what you want. It seems to me that only after that has been done should the court be asked to interfere because some of these things may right themselves without the court's assistance. I do not know whether that course appeals to you.

What interests me most is your first application. Are you putting up a plea under RP 32 but saying you would like to have that argued at a later stage in the proceedings when you are in a position to do it?

Major CRANFIELD: Yes.

The JUDGE ADVOCATE: The Rule says this: "The accused, when required to plead to any charge, may object to the charge on the grounds that it does not disclose any offence under the Army Act" -- or under the Regulations in this case -- "and is not in accordance with the Regulations". It is a matter for the court. It seems to me that the businesslike way and the fair way of dealing with this matter is for the court to take the evidence and to agree that the right of the defence to make the objection should be preserved but that they should be allowed to do it at the close of the case for the prosecution. That course may appeal to the court, but I think they would like to hear Col. Backhouse first.

Col. BACKHOUSE: The Rule, of course, requires the court to adjudicate on the point now. However, if the court think it right and proper that we should take the course of leaving the adjudication on this point till the end of the evidence for the prosecution, the prosecution has not the slightest objection to that course.

(The court confer)

The JUDGE ADVOCATE: The court have not thought it necessary to retire. They are of opinion that it is desirable to go on and hear the evidence now. They will preserve your right to object to the validity of this charge, or the other charge, or both, at some suitable time during the proceedings. You may or may not do so, but if you or any of your colleagues desire to do so the court will allow them to do it at some suitable time when you feel competent to deal with the argument in law. Does that satisfy you?

Major CRANFIELD: Yes.

The JUDGE ADVOCATE: Can we clear the other matter up by leaving you to discuss it with the prosecutor. If there are any difficulties and you think the president should be asked to intervene, you can make an application to the court later.

Major CRANFIELD: Yes, if you consider that that will be useful. We had not an opportunity of discussing the matter with the prosecuting officers until yesterday. We do not know whether they have special facilities at their disposal to get this assistance which we require. We were hoping that the court might, by direct reference to the convening officer, expedite both help from England -----

THE JUDGE ADVOCATE: I am not in the mood to advise the court that they should just say to the prosecutor: "Help the defence in everything they want". We assume Col. Backhouse will try to help you in every way he can. If, however, there is something which you think is important and on which you consider you are not getting assistance from the military authorities, if you tell the president I am sure he will then intervene and put forward your complaint.

The PRESIDENT: I suggest that you discuss the matter with the prosecutor either during the luncheon interval or after the court closes today. If there are then any matters on which you require the help of the court, if you make application tomorrow the court will act. Does that satisfy you?

Major CRANFIELD: Yes.

The PRESIDENT: Is that all right, Col. Backhouse?

Col. BACKHOUSE: Yes.

Vol 11 (7)
Plt. 2,
CAPT. PHILLIPS: I wish to make an application on the subject of separate trials. I do not know whether the Court thinks that this is a convenient juncture to do so. It merely takes the form of an application under Rule of Procedure 32 that the defendants are incorrectly joined in both charges, and, secondly, that the two charges are incorrectly joined at the one trial.

THE JUDGE ADVOCATE: I do not want to interrupt you, but you asked me whether this is the right time to make the application. You know what the Royal Warrant says, do you?

CAPT. PHILLIPS: I am fairly familiar with it.

THE JUDGE ADVOCATE: The one I would draw your attention to is 8(2): "In any such case all or any members of any such unit or group may charged and tried jointly in respect of any such war crime" - and these are the material words which I would ask you to put your legal argument to - "and no application by any of them to be tried separately shall be allowed by the Court."

CAPT. PHILLIPS: I am aware of that provision and have a submission to make on the subject.

THE JUDGE ADVOCATE: The Court will hear you on anything you wish to put forward.

CAPT. PHILLIPS: I would like to divide what I have to say into two separate parts, and deal, first of all with the joinder in this case of the two charges, that is to say charge one and charge two which deal respectively with what happened at Belsen and what happened at Auschwitz. In our submission - and I speak for all of them on this point - the joinder of these two charges is bad and unaffected by Regulation 8(2) made under the Royal Warrant. That regulation says that "in any such case they may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court. Putting it briefly and not at the moment going into details, the submission of the defence here is this is not an application to be tried separately, it is an application that the two charges, one and two, Belsen and Auschwitz, should be heard separately, preferably by two separate courts. That is the form in which I would put this portion of the application.

On the face of it, in our submission - and I am dealing at the moment with the people who are concerned only in the first charge - there are really two types of people in this case, those charged on the first charge and those charged on both charges. From the point of view of those accused who feature only in the first charge, those who feature only in the Belsen charge, it would on the face of it, other things being equal, appear wrong that they should be tried on that charge at the same time as the other people who are charged on both charges, or being tried on the two charges. The reason being that a man who is charged with having been at Belsen only will during the course of that trial hear evidence given of what happened at Auschwitz, which can in no possibly way be evidence against him; in other words, he is going to be prejudiced straight away. I do not know whether I have made that point clear to the court.

In our submission the parallel to that case would be this, suppose you had A charged, we will say, with obtaining money by false pretences, and B also charged with obtaining money by false pretences - if you like in the same town, if you like on the same day, but two quite separate transactions, no connection between them, no joint action, it would, in our submission, be wrong that those two people should be tried together at the same time on those two separate offences, inasmuch as in the eyes of a jury or court the evidence against B would tend to the prejudice of A, and vice versa. We therefore submit that here, on the face of it, there is no justification in joining the two charges, Belsen and Auschwitz, in the case of those who were only at Belsen and were never at Auschwitz, because between the two, Belsen and Auschwitz, there is no nexus or connection at all, they merely have this in common, that they are both concentration camps, or were both concentration camps; one was in Germany and the other in Poland, but they were both administered by Germans. We say the mere fact that they were concentration camps and have that amount in common does not justify a joinder of the charges in this case.

In our submission there is no connection between the two charges other than the slight similarity that they both relate to matters in concentration camps, and my point is that in the absence of special provision that would be obviously no justification for the two charges to be joined together. The question therefore arises: is there in this case any special provision which does justify what would otherwise be improper? and the answer, in our submission, is that there are only two possible heads under which this may be justified, namely Regulation 8, which has already been referred to by the learned Judge Advocate, and Rule of Procedure 16.

THE JUDGE ADVOCATE: Does that apply to a field general?

CAPT. PHILLIPS: It is applied in substance by Rule of Procedure 109.

THE JUDGE ADVOCATE: Is not Rule of Procedure 16 dealing with the accused being tried separately and not with the separation of the offences?

CAPT. PHILLIPS: No, Sir, the amendment to it goes on to deal with the joining of charges rather than the defendants.

THE JUDGE ADVOCATE: Is not it Rule of Procedure 64 you are on really?

CAPT. PHILLIPS: I am coming to that in a moment. In our submission, that deals with people who are indicted on both charges. I am dealing only at the moment with those who are concerned on the first charge. Rule of Procedure 16, which provides for joint trials, reads as follows, in so far as it is material: "Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively; where so charged any one or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively, provided that all the said offences are founded on the same facts or are part of a series of offences of the same or a similar character." I will read the material part again; it permits the joinder of the charges "provided that all the said offences are founded on the same facts or are part of a series of offences of the same or a similar character."

In our submission, that rule does not in this case justify a joinder of the two charges, and we say that while there is a certain similarity between the subject matter of the two charges, that they are to a certain extent of a similar character, there is between them nothing in the nature of a series; all they have in common is this very slight surface similarity of their both being concentration camps administered by Germans.

A parallel, if I can draw one, would be if several persons were indicted jointly for fraud, we will say obtaining money by false pretences for example, committed if you like in London. If you were to apply this Rule of Procedure it would justify joining to that charge another charge alleging that one of those co-defendants had by himself committed a fraud, also obtaining money by false pretences, of a very similar type and having some connection with the main body of the transaction, to which the others happened in this case not to be parties. But, in my submission, it would be improper in such a case to join a separate charge of obtaining money by false pretences if the facts were in that case that the fraud was worked by one of the co-defendants, but at a different place, about a different subject matter and one having no connection in any way with those with which he was indicted jointly.

The situation here is exactly the same. These accused on whose behalf I am speaking at the moment were never at Auschwitz, they never had any connection with the place at all, and if they are to be tried at the same time as the others who were at Auschwitz they will be undeniably prejudiced by the volume of evidence about Auschwitz which will be admitted and which will be irrelevant in their case. That is all I have to say on the subject of the applicability of Rule of Procedure in this case.

I would like to deal briefly with Regulation 8. The copy we have been provided with has been re-numbered Section L.2, but it seems to be the same in substance - at any rate, as far as the words go. It says: "Where there is evidence that the war crime has been the result of concerted action upon the part of a unit or group of men" - I will pause there a moment. That does imply that there is such prima facie evidence arising out of the summary of evidence or its equivalent as will justify the court in coming to the conclusion that there has been a unit or group and that there has been concerted action. Now in the particular case of which I am speaking at the moment, these accused never were at Auschwitz. How then can they be said to have formed part of a unit or a group, or to have taken part in any concerted action when, in fact, they were never there. But that is rather by the way, because the final paragraph to that rule reads "and they may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the court." As I have already said, this is not an application by them to be tried separately. I will make that application later. This is an application that the two charges should be heard separately.

That is all I have to say on the subject of the separation of the charges from the point of view and on behalf of those who were only at Belsen. But the same application is made on behalf of those who feature in both charges. Of course, from a practicable point of

In our submission, that rule does not in this case justify a joinder of the two charges, and we say that while there is a certain similarity between the subject matter of the two charges, that they are to a certain extent of a similar character, there is between them nothing in the nature of a series; all they have in common is this very slight surface similarity of their both being concentration camps administered by Germans.

A parallel, if I can draw one, would be if several persons were indicted jointly for fraud, we will say obtaining money by false pretences for example, committed if you like in London. If you were to apply this Rule of Procedure it would justify joining to that charge another charge alleging that one of those co-defendants had by himself committed a fraud, also obtaining money by false pretences, of a very similar type and having some connection with the main body of the transaction, to which the others happened in this case not to be parties. But, in my submission, it would be improper in such a case to join a separate charge of obtaining money by false pretences if the facts were in that case that the fraud was worked by one of the co-defendants, but at a different place, about a different subject matter and one having no connection in any way with those with which he was indicted jointly.

The situation here is exactly the same. These accused on whose behalf I am speaking at the moment were never at Auschwitz, they never had any connection with the place at all, and if they are to be tried at the same time as the others who were at Auschwitz they will be undeniably prejudiced by the volume of evidence about Auschwitz which will be admitted and which will be irrelevant in their case. That is all I have to say on the subject of the applicability of Rule of Procedure in this case.

I would like to deal briefly with Regulation 8. The copy we have been provided with has been re-numbered Section L.2, but it seems to be the same in substance - at any rate, as far as the words go. It says: "Where there is evidence that the war crime has been the result of concerted action upon the part of a unit or group of men" - I will pause there a moment. That does imply that there is such prima facie evidence arising out of the summary of evidence or its equivalent as will justify the court in coming to the conclusion that there has been a unit or group and that there has been concerted action. Now in the particular case of which I am speaking at the moment, these accused never were at Auschwitz. How then can they be said to have formed part of a unit or a group, or to have taken part in any concerted action when, in fact, they were never there. But that is rather by the way, because the final paragraph to that rule reads "and they may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the court." As I have already said, this is not an application by them to be tried separately. I will make that application later. This is an application that the two charges should be heard separately.

That is all I have to say on the subject of the separation of the charges from the point of view and on behalf of those who were only at Belsen. But the same application is made on behalf of those who feature in both charges. Of course, from a practicable point of

Vol II (1)

view it will be sufficient if you find on either ground, because that will have the effect of separating the two charges, but I think it proper just to indicate the grounds on which those charged on both charges make the same application. They rely on Rule of Procedure 108, which is the relevant one dealing with the charges in field general courts-martial. That Rule of Procedure reads as follows: "The statement of offence may be made briefly in any language sufficient to describe or disclose a violation of the Laws and Usages of War" - this is as amended by the Regulations - "No formal charge sheet shall be necessary, but the convening officer may nevertheless direct a separate trial on two or more charges preferred against an accused; or the accused before pleading may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable."

That is the ground on which those concerned in both charges not apply for the charges to be dealt with separately. I would just read again the material paragraph: "Or the accused before pleading may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable." It is the right of these accused to object on the ground that they are going to be embarrassed otherwise, and if I may indicate briefly the reasons why they are going to be embarrassed in this case they are as follows. Of the bulk of the evidence contained in the abstract which has been provided, although I have not counted them up at least 50% and probably more relates to Auschwitz. Therefore a man who is standing his trial on allegations concerning what he did at Belzec is surely to be prejudiced when more than 50%, the greater volume of the evidence, heard by the court is going to be about what he is alleged to have done and principally what others are alleged to have done in Auschwitz. In other words, however fair minded the court may be it is an effort which it is almost impossible for them to make, to keep in two water-tight compartments these two bodies of evidence and to prevent themselves being prejudiced on one charge by the evidence on another.

Finally they will be, in our submission, embarrassed in their defence because the conditions at the two camps were vastly different. At Auschwitz there was or is alleged to have been one of these gas chambers or extermination plans which is alleged to have operated on a very considerable scale. There is no such allegation in respect of Belzen. I do not of course know at this stage what the prosecution's case will be, but if they are going to accuse these people of responsibility for what others did - in other words, if they are going to say the man in charge of number two cookhouse is guilty because he knew these people were going into the furnace that is obviously going to be a very important point for the defence. The fact that the conditions at the two camps were extremely different and the application of what may prove to be the law to the facts in those two different cases is going to make it very difficult for the court and for the defence to separate the one from the other.

Perhaps I may sum up what I have said so far. The accused, all of them, object to the joinder of the two charges. Those who appear in the first charge only object on the grounds that the joinder does not comply with RP 16. Those who feature in both charges object on the grounds that the joinder does not comply with RP 108. Finally, both classes - those who feature in the first charge and those who feature in both - say that Regulation 8 of the Royal Warrant has no application to this case, or rather, to this part of this case, that is the joinder of the charges.

That is all I have to say on the joinder of the charges. I do not know whether you wish me to carry straight on with the point of the joinder of the defendants or whether the court would wish to deal separately with those points.

The JUDGE ADVOCATE: Do not you agree that the prosecution are setting out in the first charge a sort of war crime committed by a group of persons?

Capt. PHILLIPS: At Belsen.

The JUDGE ADVOCATE: Yes. Then they put a second charge alleging another sort of group war crime at Auschwitz. I can understand your arguing that this court should not try what happened at Belsen at the same time as Auschwitz, but where is your authority for saying that if those groups are properly charged anyone inside those groups can make any application to be taken out of the group?

Capt. PHILLIPS: That is not my submission at the moment. I am asking that the two groups should be tried separately. That is my present application. I say that the first charge should be tried and disposed of and at a later date charge two should be tried and disposed of.

The JUDGE ADVOCATE: You want to sever the charges and have them tried separately?

Capt. PHILLIPS: Yes.

The JUDGE ADVOCATE: Would you like the prosecutor to address us on that point now or would you prefer to put your whole argument at once?

Capt. PHILLIPS: I think it better to deal with the points one at a time. I have no more to say on the question of separating the charges.

Col. BACKHOUSE: Dealing with the question of whether the two charges should be taken together or separately, my friend suggests that they do not come within RP 16. I am afraid I entirely disagree. We disagree, of course, not on the law but on the facts. My friend is saying that these are not similar offences. He says these are two quite different camps and quite different charges. On the contrary, the charges are identical word for word. The only difference is in the victims, and in many cases there is no difference in the victims because you will find that every one of the witnesses called in respect of Auschwitz was also in fact an inmate of Belsen at a later stage. The allegation of the prosecution is that these two cases are a continuation of a series insofar as those persons who were at Auschwitz are concerned. Each of the persons, with the one exception, I think, of Staroska, came from Auschwitz to Belsen. The allegation of the prosecution is that first of all at Auschwitz they ill-treated a body of persons and that they then went to Belsen, where they continued with the ill-treatment of that body of persons. The prosecution ~~off~~ say that one

Perhaps I may sum up what I have said so far. The accused, all of them, object to the joinder of the two charges. Those who appear in the first charge only object on the grounds that the joinder does not comply with RP 16. Those who feature in both charges object on the grounds that the joinder does not comply with RP 108. Finally, both classes - those who feature in the first charge and those who feature in both - say that Regulation 8 of the Royal Warrant has no application to this case, or rather, to this part of this case, that is the joinder of the charges.

That is all I have to say on the joinder of the charges. I do not know whether you wish me to carry straight on with the point of the joinder of the defendants or whether the court would wish to deal separately with those points.

The JUDGE ADVOCATE: Do not you agree that the prosecution are setting out in the first charge a sort of war crime committed by a group of persons?

Capt. PHILLIPS: At Belsen.

The JUDGE ADVOCATE: Yes. Then they put a second charge alleging another sort of group war crime at Auschwitz. I can understand your arguing that this court should not try what happened at Belsen at the same time as Auschwitz, but where is your authority for saying that if those groups are properly charged anyone inside those groups can make any application to be taken out of the group?

Capt. PHILLIPS: That is not my submission at the moment. I am asking that the two groups should be tried separately. That is my present application. I say that the first charge should be tried and disposed of and at a later date charge two should be tried and disposed of.

The JUDGE ADVOCATE: You want to sever the charges and have them tried separately?

Capt. PHILLIPS: Yes.

The JUDGE ADVOCATE: Would you like the prosecutor to address us on that point now or would you prefer to put your whole argument at once?

Capt. PHILLIPS: I think it better to deal with the points one at a time. I have no more to say on the question of separating the charges.

C. Col. BACKHOUSE: Dealing with the question of whether the two charges should be taken together or separately, my friend suggests that they do not come within RP 16. I am afraid I entirely disagree. We disagree, of course, not on the law but on the facts. My friend is saying that these are not similar offences. He says these are two quite different camps and quite different charges. On the contrary, the charges are identical word for word. The only difference is in the victims, and in many cases there is no difference in the victims because you will find that every one of the witnesses called in respect of Auschwitz was also in fact an inmate of Belsen at a later stage. The allegation of the prosecution is that these two cases are a continuation of a series insofar as those persons who were at Auschwitz are concerned. Each of the persons, with the one exception, I think, of Staroska, came from Auschwitz to Belsen. The allegation of the prosecution is that first of all at Auschwitz they ill-treated a body of persons and that they then went to Belsen, where they continued with the ill-treatment of that body of persons. The prosecution will say that one

offense is precisely the same as the other. The individual methods of ill-treatment sometimes varied because, in the submission of the prosecution, every known method of ill-treatment was used at one or other of these camps. Nevertheless, the same people were acting as concentration camp guards in one and went to the other and acted as concentration camp guards there. They ill-treated people, and literally the same people at Auschwitz as the people they ill-treated at, Belsen. Of course, at Belsen they found a lot of new people but there were also there the ones who had come from Auschwitz. All the witnesses with regard to Auschwitz were found in Belsen.

I say these cases are exactly similar. They are part of a series of similar offences and are properly joined together on the same charge sheet. I will go further than that; I will say that if the court decide to separate these two charges I will apply to give the evidence in respect of Auschwitz on the Belsen charge. I would say that already some of the accused have indicated their defence in relation to Belsen and that is virtually a defence of accident. Some of the accused have in fact said: "We realise that conditions here were appalling but we could not help it". I should therefore ask, if necessary, to give evidence that the conditions which these same people created somewhere else were equally appalling and that they merely carried on with a series of similar offences.

Under those circumstances, in my submission the charges clearly should be joined on one charge sheet. My friend has rather put it to the court that if there were two frauds committed in different places they would not be joined. That, of course, is not so. The normal practice at the criminal bar where a group of people are indicted with a joint charge and some of those people have committed separate offences of a similar nature is to try them together. This amendment which was made in 1944 was intended to bring the Military Rules of Procedure into line with the rules of procedure in ordinary criminal courts in England.

~~In my submission,~~ It is my submission that these two charges should be tried together. I say that will mean no unnecessary embarrassment to the defence because we should apply to bring forward all the evidence whether the charges were tried separately or together.

With regard to the question of the joint trial of individual persons, I want to make it quite clear from the outset that the prosecution in this case will allege that this is a joint and collective offence by a group of people. That is the allegation in the charge and it is intended to be the allegation in the charge. Individual atrocities committed by individual persons are put forward to show that they were taking part in and acquiescing in the system which a group were carrying on. I would even go so far as to say that they are a unit - not if we were to consider it in the strict sense of whether they were entitled to a PRI and unit funds. They were, however, acting in common under a commanding officer, Kramer, who was the commandant of that camp. All the accused were either members of his staff or internees who had been given authority by him. I say they are definitely a group and indeed, in the sense of this rule, a unit. As such, in respect of each charge the court cannot take note of an application to try persons named in that particular charge separately. I agree that does not apply to the question of splitting the charges, which is a separate application. I say they should not be split; they are plainly part of a series of similar cases and that they come directly within the amendment which was specially made of this nature.

The JUDGE ADVOCATE: What about the one accused who does not seem to have taken part in the system, because he was not there?

Col. BACKHOUSE: That particular accused was, of course, a member of the group at Auschwitz and therefore must be tried with the other members of the group there. It is a joint and similar charge. My friend's argument perhaps does not apply in relation to that case; his objection is that the people who were at Belson should have evidence given of happenings at Auschwitz. She was in fact at Auschwitz - or that is the allegation of the prosecution. She is a member of the Auschwitz group who did not come on, so far as I know, to Belson.

The JUDGE ADVOCATE: You are submitting that she will not be embarrassed?

Col. BACKHOUSE: Yes; she must be tried with the other Auschwitz people and it clearly cannot embarrass her to hear about Belson.

The JUDGE ADVOCATE: Capt. Phillips, do you want to reply? You have a right to do so.

Capt. PHILLIPS: There are two points raised by the prosecutor with which I should like to deal. In my submission, in dealing with this question he has dealt with it exclusively, almost, from the point of view of the victims. It is not denied that many of the people who were at Belson had previously been at Auschwitz, but what of it? What we are concerned with here is the accused. Many of these accused never were at Auschwitz. What connection, therefore, can they have with what has been suggested by the prosecutor to be a series of cases in which they all had some common interest? Secondly, not only were certain of the accused never at Auschwitz, but certain of them did not even arrive in Belson -- this, I think, is no matter of dispute -- until February, and some of them even as late as April of this year. Yet these are the people who it is said took part or may fitly be tried as having taken part in what is called a series of offences. I do not deny for one moment that Auschwitz and Belson were similar; my point is that they could not properly be said to have formed part of a series.

The JUDGE ADVOCATE: May it please the court. I do not propose to detain you long. You have had the law, such as it is, put very fairly and properly before you. The application made to you can, I think, be summarised in this way. It is an application by the defence that it would not be right, that it would be embarrassing and that it would be improper if you were to take the whole of the evidence together which relates to these two charges and if you were to try the accused upon these two charges at one and the same time. In the words of the lawyer, there is an application to sever these charges, that is to say, that this court should first of all deal with the first charge and that thereafter this or a different court, after this court has arrived at its finding on the first charge, should proceed to deal with the second charge. That is entirely a matter for you. You have had your attention directed to all the relevant matters. I propose to ask you, when we have heard all the defending officer has to say, to close your court and consider this application on its merits. Capt. Phillips, do you want to add anything before the court deal with this point; or have you another point which is a different point completely?

Capt. PHILLIPS: I have a point about covering the defendants, but I think it would be better to leave that until the court has decided on this point.

(At 1210 hours the court is closed).

Vol II (1)

(At 1215 hours the Court re-opens.)

(The accused are again brought before the Court.)

THE JUDGE ADVOCATE: Capt. Phillips, the Court ask me to say that they are indebted to you for a very clear and cogent argument and they have understood it very thoroughly. They have carefully considered it, but they ask me to say that they over-rule this application and they will not sever the first charge from the second. That being so, the Court will listen to anything more you want to say.

CAPT. PHILLIPS: If you please. In support of the last application I spoke on behalf of all the accused and all the defending officers. In support of an application to sever the defendants as opposed to the charges I speak in the first instance generally with the approval and in support of all the accused and with the approval of all the defending officers. While theoretically it may be possible -- obviously it would be impracticable -- to have 46 separate trials in this case, nevertheless when I have finished dealing generally with what we consider to be the points at issue, those defending officers who wish to make a specific application for a separate trial will address the Court, if that course seems convenient to you?

THE JUDGE ADVOCATE: Yes.

CAPT. PHILLIPS: Having regard to your decision on the question of severing the trials, the question of whether the defendants, the accused in this case, are correctly joined together, in our submission depends upon the interpretation which the Court gives to Regulation 8 of the Royal Warrant or the Regulations made under the Royal Warrant, and I will confine my attention to that Regulation.

I would like to draw the attention of the Court to the wording of the first paragraph or of the first three lines of the first paragraph, which says: "Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men ---" and then it goes on to provide they may be tried jointly, and so on.

Clearly the Court cannot deal with the matter fully until the case has been tried so it must mean "Where there is evidence on the face of the matter that the war crime has been the result of concerted action against a unit or group". I do not propose to deal with the question of unit or group at any length but to concentrate my attention upon this word "Concerted" - "Concerted action". In our submission unless the Court is satisfied on prima facie evidence of concerted action there is no reason why it should not hear an application for a separate trial.

The word "Concert" according to the Little Oxford Dictionary means to plan, to premeditate, or to contrive, all of which words clearly imply a certain amount of common intention or common action between various people to contrive, to premeditate and to plan.

What evidence is there available at this stage to the Court - and it is only upon such evidence that they can act - that what happened at Belsen and what happened at Auschwitz was the result of planning, contrivance or pre-arrangement?

In our submission there is no such sufficient evidence, and as an example and in support of that contention I would point out what I have already said, that certain of the accused did not arrive at Belsen until April of 1945. You will remember the liberation took place on the 15th, I think it was, of that month. How then can these persons be said to have been responsible or in particular to have taken part in a series of war crimes committed at places where they never were - in the case of Auschwitz and in the case of Belsen at a place where they were only for a short period.

Admittedly many of them were there for this short period while these things were happening, but how can it be said that they took part in concerted action, in action that was planned, contrived, or pre-meditated? In the submission of the defence it is ridiculous to suggest that there is at this moment, whatever there may be later, available to the Court any evidence to suggest such concerted action.

It is admitted, of course, that the charge sheet alleges that these people when members of the staff of Belsen and responsible for the well-being of people there were together concerned and so on as parties to the ill-treatment of certain such persons, but the point which I am making is that the Court is entitled to look behind the wording of the charge sheet at the substance of the matter as it stands and as it can only stand from the available depositions at this moment. If the Court is not satisfied that there is now evidence of concerted action it is entitled to hear from individual accused an application to be tried separately on the grounds either that they will be embarrassed in their defence if tried jointly or -- and this is the more important category -- on the grounds that they wish to call for their own defence some of these people who stand accused with them here to-day and who would otherwise not be available as a witness for the defence except possibly upon cross-examination if that accused gave evidence on his own behalf.

Having outlined the case for the defence on this point in general terms I will leave the matter now, with your permission, to those defending officers who wish to make individual applications on behalf of their accused for a separate trial.

MAJOR WINWOOD: I wish to make an application on behalf of one of the accused, Joseph Kramer, on the ground that I wish to call a vast majority and possibly the whole of the other accused as witnesses in his defence, and if I am not allowed a separate trial I will be estopped from doing that.

MAJOR MUNRO: I appear for the accused Nos. 5, 6, 7 and 8. I am not concerned as others are concerned with making an application for a separate trial as I do not think that they particularly would be prejudiced by it, but on the other hand I am concerned to support any such application on the other ground because there are at least two of these accused whom I represent who are required to give evidence for other accused and as I cannot at this stage say whether or not I am going to put my own accused into the witness-box the other defending officers cannot know now whether or not they will be available.

MAJOR CRANFIELD: I do not wish to add anything to what Capt. Phillips has already said.

Vol I (1)

CAPT. ROBERTS: I appear for the accused Oscar Schmiedtzt, No. 14 on the list. I wish to apply for a separate trial for him under Rule of Procedure 16 on the ground that the evidence of two other accused persons will be material to his defence. The evidence revealed against Schmiedtzt is contained in one statement, and amongst other things that statement alleges that Schmiedtzt was a member of the S.S. and that he was at Belson concentration camp. I shall seek to establish firstly that he was not and never was a member of the S.S. and, secondly, that he was never in or on the staff of the Belson concentration camp.

In order that I may do this it is essential that I shall call at least two other accused persons to corroborate his own evidence.

CAPT. BROWN: I represent the four accused Ladislav Gura, Fritz Mathes, Otto Calesson and Karl Egersdorf. In respect of Mathes and Gura I ask for a separate trial on similar grounds to Capt. Roberts's request; in respect of the accused Calesson I apply for a separate trial on similar grounds to that and on the ground that that man arrived in Belson camp on the 12th April which was only five days before the camp was liberated; and in respect of the accused Calesson I apply on similar grounds, that he arrived in Belson on or about the 8th April, 1945, a matter of only seven days before the camp was liberated.

CAPT. FIELDEN: I am the defending officer for Walter Otto, Anchor Pinchen and Franz Stofel, and I make an application for a separate trial in respect of those three men substantially on the same grounds that have been put forward by the other defending officers.

CAPT. CORBALLY: I represent the accused Nos. 26, 27, 28 and 29 - Schreier, Dor, Barsch and Zodel. I too wish to make an application for a separate trial on the ground that all of these four accused only joined Belson camp in the last days before the liberation and that they would be considerably prejudiced if there is going to be heard against them evidence concerning other crimes which were committed at Belson before they arrived. I submit also that there is no prima facie evidence whatever of concerted action on their part.

Ilse

CAPT. NEAVE: I represent the accused Schlomoivicz, Forster, Ida Forster and Opitz, and for the reasons which have already been placed before you I wish to apply for a separate trial on the behalf of Ignatz Schlomoivicz on the ground that he arrived at Belson on the 8th April, 1945. I wish to apply for a separate trial for Ilse Forster on the ground that two of the other accused who are arraigned before you are material witnesses for her defence. These two accused are Hildogard Hahnel and Charlotte Klein. I wish also to ask for a separate trial for Klara Opitz on the ground that she arrived at Belson on the 13th April, 1945.

CAPT. PHILLIPS: I have no individual special application to make.

LT. BOYD: I represent No. Gertrude Fift, No. 41 Gertrude Sauer and No. 42 Hilde Lisowitz. I make application for a separate trial for each of those first on the ground that there is no prima facie evidence of their taking part in any concerted action, so that they will be prejudiced by evidence given against other accused, and, secondly, in each case the evidence of another accused is material to their defence.

CAPT. DE MUNRO: I make application with regard to one of my accused, Hildegard Hahnel. My defence in this case is an alibi and in order to establish that I must call one of the other accused Elizabeth Volkonrath, No. 7., who is essential to my case.

LT. JEDRZEJOWICZ: I represent accused No. 48, 47, 46, 31, 20 and 32. Of those six accused three have never been to Auschwitz and three have been to Auschwitz. Of those three two have never had any position in the camp so I apply for a separate trial because they would be prejudiced if they did not get it. Of those three who have been only at Belsen two have to ask for another accused to be a witness, and not only are those accused material witnesses but they seem to be the only witnesses I can get hold of to prove my case.

THE JUDGE ADVOCATE: Does that complete everything the defending officers wish to say? (A pause) Col. Backhouse, do you wish to say anything?

COL. BACKHOUSE: Of course this application I think in origin seems to be getting a little mixed with the last one and this application is purely and simply for separate trials in respect of separate persons. As I made it clear, I hope, the case for the prosecution is that this is a joint charge, a joint charge of creating bad conditions at Auschwitz in respect of the second charge and at Belsen in respect of the first charge. There are no specific details contained in the charge but it was ill-treatment which caused the death of a number of people and the cause of suffering to a large number of other people.

The case for the prosecution is quite a definite one, it is that the people concerned are all members of an organisation, that they served under a joint leader and that their actions are common - that each one of the persons in the dock has taken part in these cruelties. I ask the Court to say that from the evidence on the depositions -- without going into details against this accused or that accused -- there is ample evidence, prima facie evidence, provided it is accepted, on which the Court can draw the overwhelming inference that this was a common action by all these people. It cannot be coincidence that at five different cookhouses people are shot; it cannot be coincidence that at Auschwitz people go round hitting people on the head with a large stick and at Belsen people did precisely the same thing.

If necessary, if it is suggested that people were only at Belsen for two days, I would be prepared to show by evidence that those people did the same thing at other places before they got there and that they were all taking part in this concerted action of ill-treating these internees. I say that there is ample evidence on the summary to show that that is so.

I do not want to go through each of these cases in turn. I ask the Court to regard the application as a whole as being one which must fall on the ground that there is ample evidence on the summary that there was concerted action by these people at Auschwitz and at Belsen.

THE JUDGE ADVOCATE: The only thing that troubles me, Col. Backhouse, is how do we interpret Paragraph 8(2). "Where there is evidence that a war crime has

Vol II (7)

been the result of concerted action". Where do we look for that evidence?

COL BACKHOUSE: I think it should be: "Where it is charged". I think it has obviously to be "Where it is charged" because you are not in possession of evidence, but if it does say evidence the only way it can be done is the evidence which is before you in the summary of evidence or the abstract which has been supplied to you.

THE JUDGE ADVOCATE: I find it a little difficult to direct the Court as to where they are to find this evidence.

COL. BACKHOUSE: The proper and only time to make this application is before any evidence is called before this Court. It can only be a question - and I think my friends agree - of taking it as being the prima facie evidence which is present in the abstract supplied to the Court.

THE JUDGE ADVOCATE: It looks to me as if you must read it "Where a charge sheet alleges ---" whether it be an abstract or summary on which the charge is based, and that there is prima facie evidence in the summary.

COL. BACKHOUSE: I think that was obviously the way it should be read. I think that is agreed?

CAPT. PHILLIPS: Yes.

THE JUDGE ADVOCATE: Have you anything else you want to say?

COL. BACKHOUSE: No. If you agree that there was evidence of concerted action then, of course, this application must fail because the Court have no power to order a separate trial.

THE JUDGE ADVOCATE: Does any defending officer wish to add anything?

MAJOR MUNRO: If it is the case, as the prosecution allege, that ^{the} prima facie evidence required under Rule 8(2) is the evidence in the abstract then the Court must be satisfied that that evidence in the abstract is so good as to favour the case against separating the trials to the detriment of one accused whose defence is going to be completely overwhelmed by the result in that he will not be able to call witnesses for his defence at all. Therefore before you come to such a conclusion the abstract must be very carefully considered by the Court for them to satisfy themselves there is indeed such evidence of concerted action.

CAPT. PHILLIPS: I would like to add one very short word. I think there is a substantial amount of agreement between myself and Col. Backhouse on this point, that the prima facie evidence must come from a reading of the abstract in the case, and I would ask the Court to read the abstract carefully in their consideration. As my last word I would like to remind the Court of the definition which I have given them of concerted, namely to premeditate, to plan and to contrive. I do submit that if the Court keeps that before them when deciding this submission they should come to the conclusion that there was no concerted action.

THE JUDGE ADVOCATE: There seems to me to be a little more substance and a little more difficulty for the Court in this application than the last one. It arises rather out of the wording of the Royal Warrant.

There is no doubt that at this stage of the proceedings there is really no evidence before you upon which you can judge, and I suppose it must have been intended that the documents which were now existing would be put before you, that is to say, the charge sheet, I presume, and the abstract. You have to look at those documents and if you say as a Court: Clearly we think it comes within the group or the unit, then I suppose we say we have no right in this Court to hear an application to sever in the case of the accused.

It is for you to decide what is the meaning of this Royal Warrant. You have heard what seems to be a very helpful argument from Captain Phillips and the Prosecutor, and you may think that is what the Royal Warrant is saying, or what it intends to say. That being right, the question you have to consider when you close is whether or not you think this is an alleged war crime which has been the result of concerted action on the part of a unit or group of persons. If you are satisfied that it is so and treat it as such, then you must refuse this application.

On the other hand, if you say: No, it does not come within that sub-section, then you may consider the application on its merits.

As regards merits, the Defending Officers may get some comfort - if you decide to reject this application - that presumably some of these accused, if they want to call them, will be giving evidence themselves in their own case, and if that is so there will be an opportunity no doubt to ask any questions they want to put. Of course, they cannot do that if the witnesses are not called who they want.

That seems to be the simple issue you have to consider, and I suggest again you will close the Court and consider this submission and decide what you are going to do.

THE PRESIDENT: The Court will now close to consider this application which has been put before it. The Court will re-open at 1430 hours and the decision on this application will then be announced.

(At 1253 hours the Court is closed)
(At 1430 hours the Court re-opens.)

(The accused are again brought before the Court).

THE JUDGE ADVOCATE: Captain Phillips, I will address my remarks to you, but they equally apply to your colleagues who addressed arguments to the Court. The Court have considered the arguments and they feel that these are cases which do fall within Regulation 8(2) and that they are therefore bound to comply with the Regulation. That being so they must refuse the application in your case and in the case of all the others. That means that no accused will be tried separately so far as this trial is concerned. There are no further applications, are there, at this stage of the proceedings?

(No further applications were made).

(The accused are asked to plead to the first charge and severally plead not guilty).

THE JUDGE ADVOCATE: Has any one of the accused pleaded in a way which is different to what the Defending Officers wanted them to plead. Have they pleaded contrary to what the Defending Officers expected?

(No comment was made by the Defending Officers).

THE JUDGE ADVOCATE: There is a second charge and I propose now to arraign the accused.

(The accused were duly arraigned upon the second charge, and those concerned all pleaded not guilty).

THE JUDGE ADVOCATE: The charge sheet is signed by the Commanding Officer of the Duke of Cornwall's Light Infantry, 5th Battalion, the charge sheet is endorsed: To be tried by a Military Court, and is signed by the Commander, 30 Corps.

I take it that in the previous application you included any question of applying for an adjournment, so I do not propose to put that to you again.

(There being a shorthand writer employed, the Court decide it is unnecessary to comply with Rule of Procedure 75(B)).

THE JUDGE ADVOCATE: Are you ready to hear Colonel Backhouse open the case?

THE PRESIDENT: Yes.

COLONEL BACKHOUSE: If I might make one formal application first, which is that Captain Stewart of the Legal Staff, H.Q., B.A.O.R., who is assisting me here, may be allowed to remain in Court. He is only a formal witness to produce certain documents.

THE JUDGE ADVOCATE: Is there any objection by any Defending Officer to that course?

(No objection was taken).

THE PRESIDENT: Captain Stewart may remain.

COLONEL BACKHOUSE: May it please the Court. As you have heard repeated twice, and I am afraid repeated in three languages, each of the charges in this case are that when the accused were members of the staff of one or other of these two concentration camps, and as such responsible for the well being of the prisoners interned there, in violation of the Law and Usages of War they were together concerned as parties to the ill-treatment of certain of the persons interned in the camp, and by that ill-treatment they caused the death of some and they caused physical suffering to others.

004 11 11

As it is, I think, the first case of this kind to be tried, I think I should shortly put before the Court the grounds on which we claim jurisdiction to try these charges. We base that claim on International Law as set out in the Laws and Usages of War in the Manual of Military Law. If I might refer to chapter 14, paragraph 449 it says that by the Laws and Usages of War any person committing or alleged to have committed a war crime may properly be dealt with by a Military Court or such Court as the belligerent may determine.

His Majesty the King has given a Royal Warrant which is to be found in Army Order 81 of 1945 setting out: "Whereas we deem it expedient to make provision for the trial and punishment of violation of the Laws and Usages of War committed during any war in which we have been or may be engaged at any time after the 2nd day of September, 1939, our will and pleasure is that the custody, trial and punishment of persons charged with such violations of the Laws and Usages of War as aforesaid shall be governed by the Regulations attached to this our Warrant". Regulation 2 of that Warrant provides: "The following persons shall have power to convene Military Courts for the trial of persons charged with having committed war crimes and includes inter alia any officer authorised so to do under the Warrant", which are set out in the previous paragraph.

The Royal Warrant has been directed to the Commander-in-Chief British Army of the Rhine, and he in turn has given a delegated Warrant to the General Officer Commanding 30 Corps, and it is by his Warrant that the Court is convened today.

Now the Prosecution say that the acts set out in the charges are undoubtedly war crimes, if they are proved, because the persons interned in both Auschwitz and Belsen were, amongst others - we are not, of course, concerned in this trial with atrocities by Germans against Germans - Allied nationals. You will hear that there were a great number of Allied nationals in those camps; they were either prisoners of war, - you will hear that some of them were in fact prisoners of war - or they were persons who had been deported from occupied countries or persons who had been interned in the ordinary way. They were all persons who had been placed there without a trial, either because of their religion, because of their nationality, because of their refusal to work for the enemy, or merely because they were prisoners of war who it was thought might conveniently be used in such places or exterminated in such places.

The Laws and Usages of War provide for the proper treatment not only of prisoners of war but of the civilian citizens of the nations who are occupied by a belligerent. I am not going to dwell upon the proper treatment of prisoners of war, that is surely within the military knowledge of the Court. Everyone, I think, in this Court knows what the proper treatment for a prisoner of war is. Everyone knows that he cannot be starved, he cannot be beaten, he cannot be arbitrarily punished, he cannot be killed, and none of these things, in any event, can happen to him without proper trial.

So far as the inhabitants of occupied territories are concerned, who are the great majority of the witnesses in this case, quoting again from the Manual of Military Law, Chapter 14, paragraph 383, it says: "It is the duty of the occupant to see that the lives of inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property, are just as punishable as in times of peace".

Again Chapter 14, paragraph 59(f): "Women shall be treated with all consideration due to their sex", to quote from the Hague Convention of 1907, to which Germany was a signatory: "Family honour and right, individual life and private property, as well as religious convictions and worship must be respected".

That is the Laws and Usages of War in respect of the inhabitants of occupied countries occupied by a belligerent.

Again to quote from the Manual of Military Law, Chapter 14, Section 441 reads: "The term 'War Crime' is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment or capture of the offenders".

Paragraph 442 of the same Chapter reads as follows: "War Crimes may be divided into four different classes", the first of such classes being violations of the recognized rules of warfare". In the following paragraph are set out the most important violations, two of which are ill-treatment of prisoners of war in occupied countries, and although, of course the words "inhabitants in occupied countries" are used, it is quite obvious that that should and can properly be extended to "All inhabitants of occupied countries who have been deported from their own country", the deportation, in fact, being a further infringement.

Perhaps it is put most clearly in an article by Professor Brierly, the present Professor of International Law at Oxford University: "Most of the difficulty disappears if we imagine the sort of question which the Court will have to answer: Can this killing which would normally be murder, this injury which would normally be unlawful wounding, this taking of property which would normally be theft, be justified as an act of war? If not it will be a war crime".

When the Court have heard as to what happened both at Belsen and at Auschwitz, the Prosecution will ask you to say that the treatment of the Allied Nationals in each of those camps was such as to leave you no doubt whatsoever that a war crime had been committed, that murder had been committed, for which those who you find responsible should be punished as war criminals within the jurisdiction of this Court.

The persons who the Prosecution allege suffered these injuries, who were killed, who were ill-treated, came from ten different nationalities. Britain has accepted the responsibility of this trial, because it is quite impossible to form a Court and to carry on a trial if all those nationalities are in fact represented, and as Britain is the country which is controlling this zone of Germany, and which holds these accused, Britain has accepted the responsibility of that trial with the concurrence of the United Nations War Crimes Commission on which all these nationalities are represented, and observers have been invited from each of the countries who had Nationals in this camp.

There were not many British persons in that camp. You will have the advantage of hearing one of them when I begin to call the evidence. He is the only one who is still alive of whom we are aware. When you have heard the evidence the Prosecution will ask you to say that you are satisfied that there was in each of these camps a complete disregard for Regulation 46 of the Hague Convention, a complete disregard for the principles set out in the Manual of Military Law; the way in which the inhabitants of an occupied country should be treated and, in particular, the way in which women should be treated, a complete disregard for the sanctity of human life and for human suffering, and we shall ask you to say that that disregard was shared by each and every one of the accused.

I shall ask you to say that the conditions which were found in Belsen, and the conditions of which you will hear with regard to Auschwitz, were brought about: not only by criminal neglect but that they were caused by deliberate starvation and ill-treatment, with the malicious knowledge that they must cause death; that such starvation as occurred and such ill-treatment as occurred was bound to cause the death of many and to cause lasting physical injury to many more.

In respect of Auschwitz I will go further and say that not only will the Prosecution ask you to say you are satisfied that it was done with the deliberate knowledge that the conditions would cause death but that there was deliberate killing of thousands of people and probably of millions of people, quite deliberate cold-blooded extermination of millions of people in that camp, and that each of the accused who was serving at Auschwitz and is charged in the second charge had their share in this joint endeavour in this group of persons who were carrying out this policy of deliberate extermination.

In respect of Belsen, there will not be an allegation that there was a gas chamber or that persons were herded by their thousands to their death, but there will be an allegation that by the treatment that was given to the men at Belsen, every member of the staff at Belsen who

Vol II (1)

stands before you bore their share in that treatment which they knew was causing and would continue to cause death and injury.

I shall ask the Court to view the evidence as a whole and I shall ask the Court to say that each must bear his responsibility not only for the actions of his own hand but for the actions of this criminal gang who were working together. Nevertheless, lest there should be the slightest shadow of doubt, no person has been brought before this Court against whom the Prosecution will not produce some evidence of personal acts of active and deliberate cruelty and, in many cases, individual murder. By all means if you view these separate acts separately you must, of course, when coming to your verdict decide each individual case, the case against each individual accused, whether he is guilty or not, but in considering the separate evidence of these individual acts of cruelty I ask the Court to bear them in mind not only as individual acts, but as acts of one of the members of this group, which is evidence not only against himself but against every single one of the persons who were working in that camp as part of that group taking part in this concerted ill-treatment.

I think the most convenient way of opening this case is to deal first of all with the conditions which were found at Belsen when that camp was over-run. You will hear that in the second week in April of this year there arrived at 8 Corps Headquarters certain German officers asking for a truce, a local truce, because they said we were about to over-run a camp containing some 60,000 prisoners where they said typhus and other infectious disease was rampant, and that the truce was necessary if typhus was not to spread throughout both the armies fighting there. After certain negotiations a truce was agreed to. I do not think it is necessary to go into the terms of that truce beyond saying it was agreed that the administrative N.C.Os. and officers of the S.S. who were in charge of the camp would remain with certain Hungarian guards who were there, and that the S.S. would be given an option after eight days of leaving and being taken through the lines.

On the 15th April, at 3 o'clock in the afternoon a Captain Sington, or Lieutenant Sington as he then was, was the first British officer to arrive at the camp. He arrived with a loud-speaker van with a view to making an announcement, and he was followed shortly after by Lieut. Colonel Taylor who was Officer Commanding 63 Anti-Tank Regiment who, together with one of his Batteries, moved in to take over the direction of the camp. They in turn were followed soon afterwards by a Major Birnie who was at that time on the Headquarters of 8 Corps and was lent for the purpose of assisting Lieut. Colonel Taylor, and also by Brigadier Glyn-Hughes, who was the D.D.M.S. of the Second Army.

The account which I propose to give you of the conditions which were found there is virtually the sum of what these officers found. You appreciate, of course, although they were there on the first day they also came back, and they did not find everything by any means on the first day.

The camp itself was about 15 miles north of Celle and I think perhaps the most convenient way of describing it is to say that if you

2

approach the camp it is almost like a very small Catterick. When you first arrive you first see magnificent barrack blocks, beautiful theatre and hospital and beautiful messes, but you find that that was the Panzer Grenadier training centre, and you go about a mile down a track from there and that is where you find what was Belzen concentration camp. It is roughly a kilometer and a half long and 300 to 350 metres wide. It was surrounded by wire and in that compound there were about 60 wooden huts or thereabouts. About 15 of those were used for guards and about 45 for the internees. It was split again into five compounds, apart from the administrative compound, three for the men and two for the women. There were found in the mens' compound approximately 12,000 men and in the womens' compound 28,000 women.

For the whole of this camp there were five cookhouses, two for the men and two for the women and one mixed one. For water supply there were two or three concrete ponds or tanks. Situated about the camp there was a block of administration offices, and in there there were 15 shower baths and four large disinfestors, which could have coped with about 60 suits in one and a half hours.

There were some prison cells and a crematorium, a small one, which had not been used for some little time. Each compound was separated from the others by wire and there were guard towers at the corner. But the conditions which were found in that camp were quite indescribable; I know of no words which would begin to paint the picture. There was a dense mass of emaciated scarecrows, simply living skeletons, lying, sitting and shuffling about the place.

Captain Sington will tell you that although that is a description which is given of that camp by the medical officer, they did not see it until a great change had taken place. He says that after he had arrived and made his announcement that they were free, although the position was still this dirty collection of living skeletons in rags shuffling about and not properly understanding what was happening, he says that was indescribably better than the condition when he went in there before they knew they were free. He cannot find any words at all to begin to indicate the conditions. In the mens' quarters in the first camp typhus was on the wane; it had passed its peak, but in the second camp there were 266 cases of typhus amongst the 8,000 people there, and it was still continuing.

In the No. 3 mens' camp there were no hospital huts at all. In the No. 1 womens' camp there were 23,000 women and some 500 children. Of those 2,000 were acute hospital cases, but there were only 474 bunks amongst them all. There were 250 cases of typhus. In the No. 2 womens' camp there were 5,000 women; there was a hospital hut, but it had no bunks at all and there were 300 cases of typhus not even segregated from the remainder.

Put fairly on the type of accommodation that one would normally expect, it may be said there were ten people in the space that could have been occupied properly by one, and that is even on the more crowded scale of accommodation which the German Army accepted as opposed to the accommodation which we normally accept. In an ordinary hut where we

34

would say there was sufficient room for 80 there were from 600 to 1,000 crammed in.

In the huts the living and the dying and the dead were all together. You will hear an account of the conditions later from the only Englishman who was there. Lying about the camp there were no less than 13,000 corpses unburied, and you will hear that for the last few days before the British came into the camp, when it was obvious to the accused that before long the British would be there. There has been a continuous procession of these wretched skeletons, four of them to a corpse, dragging them for 12 hours a day; 2,000 men dragging corpses for 12 hours a day, burying them in large pits. But there were still 13,000 corpses lying waiting for burial.

The condition of the corpses was something which cannot be imagined. They were so thin that you will see it was easy for a woman to carry one, but the living were in such a weak and dreadful condition that it took four of them to drag one, though a normal man or woman had not the slightest difficulty, as you will hear and see in carrying them away.

There were virtually no latrines at all. There had been some but the water supply was not working and they were totally inadequate. There had been some pits with a pole across, the only provision for men and for women, but in fact the internees were too weak to drag themselves to them and you will hear that whilst this dreadful procession of corpses was taking place they were not even allowed to go to the latrine. The result was there was excreta all over the place, because do not forget that something like 80 per cent of these people had dysentery.

You will hear that they were locked in their huts at night so crowded that it was quite impossible to lie down even on the floor. They had to sit jammed to each other. Some of the stronger ones and more enterprising would get boards and put them across the rafters and get up there. You will hear that some of those who did so had dysentery; quite impossible to move from below them - you could not move.

These were the conditions at night, and it is not to be wondered at that when the medical authorities had time to check up properly on the persons in that camp they found this position, that of the 12,000 men 2,242 were acutely ill; there were a further 7,000 requiring treatment, and there were 59 new cases a day. Of the 28,185 women found there 2,000 were acutely ill and 18,600 required treatment. There were 125 new cases a day.

In addition to the 13,000 corpses found lying there, within the next six weeks with all the care and attention which could be rushed to their assistance no less than 13,000 more died, and indeed in addition to that 13,000 there were still six weeks later 11,000 in hospital and 54 died on that date I am taking - the 27th May, which is a arbitrary date - they were still dying then.

The causes of death were mainly starvation and thirst and ill-treatment, beating to death and shooting, but the starvation was killing every person in that camp. If a man did not die directly of starvation he was so weakened that he had no resistance whatsoever to disease. If he did not die of either he died of overwork or he died of the beating he received.

You will hear - taking a block at random - that in block 13 the average life of a man there was 12 days from arrival. The food position was such that you will hear that the ordinary rations in a concentration camp, quite apart from any peculiarities which may arise, was a cup of weak ersatz coffee in the morning; that was breakfast. Midday meal consisted of some turnip soup with sometimes a little bread. The evening meal did not exist.

You will hear from the English witness who I shall call - he was there for about eight or nine days - that the sum total of the food that he received during the first four days, for the whole four days, amounted to less than half a litre of soup and no bread; nothing else. The only water he received during that four days was half a mug full. During the last five days before the liberation he received neither food nor water, and he was being required, with the other prisoners in the camp, to work 12 hours a day dragging corpses.

He will tell you although they had not the strength to move them they had to move fast; it was not really fast, but it seemed fast because the moment they faltered they were beaten about the head with sticks, and as they passed various places if they faltered they were shot. There was one guard standing there and after this miserable chain had been round a time or two they realised that every man who was a yard in front was shot - there was a pile of corpses - the guard did not like them. They fell by the wayside, and you will hear that that was normal.

I have already said there are no words which will describe this camp adequately, but it is proposed to show to you a film which was taken when the British authorities went into the camp, and that will give you some idea of the conditions of the camp, and I shall invite you to watch that film and to see for yourselves the degradation to which the human mind can descend. You will see the thousands of corpses lying about; you will see the condition of those bodies. You will also see the well fed condition of the S.S. who were stationed there. You will see people fishing for water with tins in a small tank. What you will not see is that the water was foul and that there were bodies in it, but that was all the water that was available to drink - fishing with a tin on string out of one small tank. You will see the dead; you will see the living and you will actually see the dying.

What that film cannot, of course, give you, is the abominable smell, the filth and squalor of the whole place which stank to high heaven. If there is any one of the accused who suggests that he did not know what the conditions were, when you have seen the film, if you will not let your imagination run, if you will merely draw the only possible inference, the

Prosecution will ask you to say that it is a hopeless lie for anyone to suggest that he did not know what was happening in that camp.

The history of Belsen insofar as one knows it - and much of this has had to be taken from statements made by Josef Kramer - is that it was originally a small camp, a transit camp, but at the end of November of last year Josef Kramer, who had been in the concentration camp service throughout the period of Nazi ascendancy, having joined as a volunteer in 1932, was called to Berlin. He had been the commander of a portion of Auschwitz. In Berlin he saw the head of the concentration camp service and he was told that Belsen was to become a convalescent camp for sick persons from concentration camps, from factories and from farms, displaced persons from the whole of north-west Europe.

Kramer was told to go back to the camp, or go to the camp as he had not been there yet, and he says he was told to go and look at it and if he found any difficulties he was to write or report back.

He went there and you will hear that from the 1st December he was the Commandant of the camp, in sole charge. There were no standing orders from Berlin; the administration of the camp was left to him, and the Prosecution will ask you to say that he is primarily responsible for everything that happened in that camp.

He was assisted by an officer in charge of administration, who I regret is not before the Court, by an officer who was known as the criminal investigation officer, who is also not before the Court, by a doctor, by a dentist, and the rest of his staff, apart from the Guard Commander who did not come directly under him, were Warrant Officers and N.C.Os. of the S.S.

The doctor when the camp was over-run was Dr. Klein, who is No. 2 of the accused. According to Kramer he had a guard company of 60 to 70 S.S. N.C.O's. You will hear that in Belsen, as in every other concentration camp, one finds exactly the same thing. You will find two classes of persons exercising authority. One could almost call them the masters and prefects. You will find that there are the S.S. men in charge of the kitchens, in charge of the blocks, in charge of the working parties, in charge of the roll calls, and so on, generally known as the lager-fuhrer, or the block-fuhrer, or the kommando-fuhrer. Wherever you find the word "fuhrer" you may take it is the S.S. men in charge.

In addition to that there were appointed virtually prefects amongst the internees. You will hear that the internees in addition to the political internees had habitual criminals amongst them. Perhaps the Court may know that we have a provision in English law which is hardly ever put into operation that if a man becomes a habitual criminal, provided the Court are satisfied that he has adopted a life completely of crime, and he is sentenced to penal servitude, then at the end of his sentence he may be held for a period in preventive detention.

Concentration camps were used for such persons as well but they, you will find, were generally made the prefects or lager-fuhrers one to each block, one to each room, and, as a rule, one to each kommando. You will hear, indeed, that they were very often as cruel and more cruel than the guards. Some of them, of course, you will find amongst the accused, but that in no way exempts the guards for their conduct. In this case you will find that they were working together and were part of this system.

Reveille was normally four o'clock in the morning. No one was exempt at all; sick or dying had to be dragged out and then they were required to stand and very often they stood for hours. Anyone who moved was punished by being beaten on the head with a stick and very often beaten again on the ground and kicked on the ground and in many cases left dead.

Of course you must realise the condition of those people. It is one thing for a healthy man to be struck on the head with a pole and kicked on the ground but it is a totally different thing for someone in a bad state to be beaten because with a slight push they will be down on the ground sometimes never to get up again.

Breakfast consisted of one cup of coffee which was followed by another roll call at half-past five. Then those inmates who were fit to move at all were divided up into working kommandos or parties for collecting wood, road repairs, tailor's room orderlies, foodsteward, and so on. Their working hours were from 6 a.m. to 4 p.m. in the winter and 6 a.m. to 6 p.m. in the summer with an hour for lunch, such as it was - half a pint of turnip soup. Sometimes they had bread; the most it ever was was 300 grammes a day but latterly no bread at all.

During the night they were locked in the huts but if by any chance some one was missed the whole lot were brought out on parade at two or three in the morning and were kept there the rest of the night whilst they tried to find them.

Wherever they went and whatever they were doing you will hear of this regular and systematic beating. Every guard carried a stick, a rubber truncheon, or a whip or a revolver. They used anything that came to their hands, iron bars, fists and feet, and as a rule beat them on the head and continued the merciless beating after the man had been knocked to the ground. Men and women alike were regularly killed by such beatings.

Latterly, towards the end, you will find that the internees were beginning to scamble for bits of potato peel, little bits of stuff, bits of swede, anything. People were hanging round the kitchens to try and get a meatless bone out of the swill or try to get the peelings from the swedes. You will hear again and again of beatings and shooting of such persons. They were driven to try and steal anything at all because they were starving.

Finally you will hear that many of them resorted to cannibalism, that they were driven to the length of cutting flesh from the dead bodies and eating it. You will hear from Mr Le Druilleneo, a British subject who was in the camp that when he was engaged in this miserable process of dragging away the corpses as many as one in ten had a piece out from the thigh or some other part of the body, which had been taken and eaten, and he saw people actually doing it. That was the length to which they had been brought.

I want just to tell the Court briefly about the experiences of Mr Le Druilleneo. He was arrested in Jersey one day before D-day. He was arrested because his sister had helped a Russian officer to escape. You will hear from him that his sister has not returned from Germany. He was put into various prisons and concentration camps and finally he came here to Luneberg by train and from Luneberg he was taken by truck arriving at Belsen on the night of about the 5th April, 1945. He arrived there somewhere about half-past ten at night. You will hear that in a concentration camp you are not very sure of either the date or time because you have no belongings of your own. Anything which you try to keep, even your pocket handkerchiefs, is taken from you and you are beaten for having them. You have no name; that is why you find few of the prisoners know the names of others. You have a number tattooed on your arm and you are known by that number.

When Mr Le Druilleneo arrived at the camp you will hear him describe to you how he was offered some soup. He was posted to Block 13 and he was offered some soup in exchange for any cigarettes or bread he had brought and anyone who could not produce some cigarettes or bread got no soup. He was put into Block 13 and locked in there with 600 others. The floor was wet and absolutely indescribably foul having been used as a latrine by people who were too weak to move. They were so crowded that he had to sleep sitting up because he could not lay down. They were kept locked in there during the night. Eight or nine of them died that night and died every night he was there. The corpses, of course, were not to be taken out; they stayed there with the living.

At 3.30 in the morning he was called out and assisted out by the usual beating. They went out on to their miserable parade without anything to eat. They were then kept standing at attention till eight o'clock in the morning. Anybody who moved was beaten. Some fell and then they were beaten or kicked on the ground. If they could get up they did but if not they lay there,

The first day they did little. The next day they were dragged out again at an early hour and divided into four. They then set off in four groups and had to drag the corpses and put the corpses in the large burial pits to begin with but they eventually piled the corpses up because there was nowhere to bury them. They did that in order to clear up the camp before the British arrived.

Every guard carried a stick or a piece of wood and the orderlies or block altesters, whom I term the prefects, lined the road armed with sticks and rubber truncheons and anybody who faltered was beaten, and for 12 solid hours that miserable procession dragged itself round. Their only food was an ordinary British Army mug less than a quarter full of turnip soup.

They passed one of the water reservoirs, such as it was, each time they went round and you can imagine the dust as they dragged those corpses. They were not allowed to stop and they were not allowed to have a drink at all throughout the day. If they faltered a yard or so behind the man in front they were beaten till they got up. That is how he spent the first four days and that is all he had to eat during those four days.

The last five days he had neither food nor water. The one and only thing that kept him alive was the fact that he could hear the guns and they felt if they could keep alive for one more day then possibly somebody would come. All day you would hear shots going off about the camp and you would see the guards amusing themselves by shooting the internees for no apparent reason at all. For the last three days the shots were more or less insistent.

That is the picture of what Belsen was like. It may be that it will be put to you, because it has already been indicated in statements made by Kramer and made by other of the accused, that what was happening was that transports full of people were coming in from other camps, that they were over-run and it was impossible to get food owing to the British having smashed up the transport. Kramer says he did everything he could to try and provide food for these poor people, to try and provide water for them and to see to their health and well-being.

You will hear Major Birnie who arrived on the 15th April with Colonel Taylor. The next morning he went off to a Wehrmacht camp which was about a mile up the road and there saw the quartermaster. You will hear that that is where the food for the concentration camp came from. Kramer will tell you the reason he could not get food was because it came from Gelle and Hanover but it in fact came from the Wehrmacht camp. In that camp there was any amount of food which could have been distributed to these people. There were at least 600 tons of potatoes, 122 tons of tinned meat, 30 tons of sugar, tons of powdered milk and flour. Kramer, of course, says it was impossible to get bread but he tried his best. You will hear that there was a fully stocked bakery in the Wehrmacht camp with a terrific grain supply and capable of turning out 60,000 loaves a day which it did immediately afterwards and continued to do so with the same staff and from the same stock of grain.

You will hear that there were vast quantities of medical supplies which I think have not been exhausted yet. You will hear that in the administration block in No. 1 camp there were about 100 wooden boxes of tinned milk and meat which was in the S.S. quarters and marked Hungarian. They were Red Cross parcels which had been sent to the Hungarian internees by the Hungarian Red Cross and stolen by the S.S. guards.

With regard to the water supply you will hear that although the camp had been without water for anything from three to five days and all that there was were these foul concrete tanks of water with bodies in them. You will hear that as soon as somebody started to try and do something within two days with the equipment which was already in that camp and with no addition to it there was an adequate working water supply laid on to every kitchen, and that within five days with the assistance only of the local fire brigade there was a complete and proper water system running throughout the camp. So much for the story that this was a breakdown of organisation due to war conditions. You will hear that there was not ing lacking to provide full water and sanitation in that camp had anybody wanted to do it at all.

That is all I want to tell you particularly about Belsen. I do not want to start going into details of individual cases now, but when the investigation began into the conditions it soon became quite obvious that most of the internees who were still alive had come from other camps. As you will probably realise the life of an internee in Belsen was not a long one. Most of the internees had come from other camps and a considerable number came from Auschwitz. I therefore turn now to the general conditions at Auschwitz which, of course, only relate to the second charge concerning the conditions at Auschwitz camp.

Auschwitz was about 50 miles S.S.W. of Dachau in Poland, and Kramer states that he first went there in May 1940, when it was a small camp with about 3,000 or 4,000 people working there building the camp. They were then living in wooden huts and were building stone ones. There was one guard at that time of 40 or 50 S.S. The death rate was about 30 a week. Kramer took over in November 1940 and then did not go back there till May 1944. When he returned in May 1944 Auschwitz had become the biggest concentration camp in Europe, had become a huge place with a number of subsidiary camps. Kramer became Commandant of one section of the camp; he was called a camp commander although his duties were those of a Lagerfuhrer for his section of the camp. According to Kramer he had 15,000 to 40,000 internees in his portion of the camp. There were 80 or 90 huts for men and 60 for women, and there were 25 to 30 hospital huts. At about this time he says there were 450 to 600 deaths a week. That is his story. You will hear that in Auschwitz there was very much the same routine as I have described at Belsen; up early in the morning, persons beaten for the slightest excuse and sent out on hard working parties; but there were some incidents there which one had not heard of at Belsen. You will hear that some of these S.S. women amused themselves by having large hounds which they set upon persons, deliberately let them tear the persons to pieces - bite them and tear them till they died. That was one of their amusements, but the real purpose was the quite cold blooded determination to exterminate all who were not fit to act as beasts of burden for Germany. You will hear that in Kramer's camp alone there were five gas chambers. To take a description of one of them. When you went inside you came to what appeared to be a changing room; there were hooks all round to put clothes on. Unsuspecting persons were taken there and told by loud speaker to strap their clothes up carefully all ready for when they came out from their bath. Then naked they were taken to the next room, where there were five rows of, apparently 20 sprays, showers. The door was then locked. It would hold about 1,000 people at a time. The place was gas proof, and gas was turned on and these persons were gassed deliberately and killed. There was a door at the other end, a trolley and rails, and the bodies were loaded on the trolley and taken straight to the crematorium. These chambers were used for the extermination of all unfit persons.

You have got to try and imagine the type of men that were prepared for this mass murder of every person unfit to serve the reich. There were occasions when selections, as they were called, were made on arrival. The transports arrived and before people were posted to their blocks selections were made and the old, children, pregnant women, weak or sick, or those showing signs of unfitness, never went into the camp at all, they were loaded on lorries and taken straight to the gas chambers, where they were scientifically murdered. Everyone in the camp knew about it. Everyone of the accused who was at Auschwitz knew about it, and you will hear that the majority of them took an active part in the selection of victims for the gas chamber.

To give you some instances of what happened on arrival, you will hear that in November 1944 in one transport of 1400 people 1,000 never went into the camp, only 400 were accepted and the remainder were taken and gassed straight away. Another transport came, and of 5,000 persons brought there 4,500 were gassed. You will hear that 45,000 Greek Jews were taken to that camp, and when they were evacuating only 60 were left out of the 45,000.

In addition to the selections when people arrived, there were held

two or three times a week selections to weed out people who had become unfit for work, and you will hear a case of when that happened - even the camp band playing while the selections were made. Those making the selections included Dr. Klein, No.2 of the accused, who admits freely and frankly that he did so. Kramer, No.1, states in his first statement that he never heard of such a thing, that there could not have been a gas chamber in the camp; he must have known about it, and says in his second statement he saw it on his first inspection of the camp, although, of course, he says he had nothing to do with it, it was the responsibility of his senior officer. It was made clear to him he had no control over the gas chamber. But there are plenty of witnesses who will tell you he was there taking an active part in these selections. Other times when people were selected was in hospital. To take an instance, on the 1st December 1943 there were 4,124 women in hospital, 4,000 were taken out and made to run naked round the hospital and those who could not keep up were taken to the gas chamber. In May 1944 you will hear that the gas chamber was being used so fast that the crematorium could not keep up with them and the bodies had to be thrown in ditches and burned. You will hear one of the men who worked in one of the crematoriums tell you that in three months in one of the five chambers along 20,000 people were gassed, and you will hear from a witness who I shall call, who is herself a doctor, that from records she has seen there were no less than 4,000,000 people cremated in that camp.

You will hear an actual account of what the gassing was like from two people who were sent into the gas chamber and rescued at the last moment. You will hear that the victims foamed at the mouth, bit their hands, bled from their ears, nose and mouth, turned blue and finally died.

You will hear that Kramer, No.1, Klein, No.2, Hoessler, No.5, Elisabeth Volkenrath, No.7, Irma Gress, No.9, and Hilde Lobauer, No.11, all took an active part in the selections. If the court believes that evidence I shall ask the court to say that they are satisfied that every one of the guards at Auschwitz who is brought before you was plainly guilty of what is mass murder, and deliberate mass murder.

Now, Sir, I do not propose, as I have already said, to go in detail, unless you wish me to do so, into the evidence against individual persons. I propose now to call, first of all, witnesses to prove the general state of the camp at Belsen. I propose to follow that up by proving to you and then showing you the film of what was found there. Then I propose to call witnesses to prove the gas chambers at Auschwitz and then to go on to the evidence regarding each individual accused. There are only two further things I should say.

THE JUDGE ADVOCATE: I did not hear you mention affidavits.

COL. BACKHOUSE: That is what I was about to mention. As you appreciate, although this trial is by military British law, under the regulations there have been certain alterations made in the laws of evidence, for the obvious reason that if that were not so many people would be bound to escape justice because of movements of witnesses in this country, and

Vol II (1) 43
as you are aware affidavits may be put before the court.

Now in Belson there were some 40,000 people when we took over, 28,000 women and 12,000 men. Many of those were hospital cases. A great many more were anxious to go away as fast as they could. They spoke almost every language under the sun and the investigation of a case of this kind was tremendous, because nobody there was interested in investigating a war crime while there were still people whose lives were in danger, and everybody's services were used, first of all, to try and save the lives of those poor unfortunates who were still there. What was done was to take affidavits as far as possible from witnesses, and you will have most of the evidence by affidavits and those supplied by way of abstract. But a great many of those people disappeared; it was impossible for us or anybody to keep 40,000 people in check, and the result is there are not many still here. I will call all those available, and then I shall put the affidavits before the court and ask for that evidence to be accepted.

The question arises as to the most convenient manner in doing that in order to keep the thing in some kind of compass, and what I would propose, subject to any objection from the defending officers and advice from the learned Judge Advocate, is having dealt with the general evidence I would then put forward to you not a complete affidavit but to read to you the portions of affidavits grouped round an individual person or incident. I would, of course, put in the affidavit the first time I used that particular affidavit. Take one which deals with three different incidents relating to three different accused. I suggest I put that in when the first of the accused is dealt with, read you the portion which relates to that particular accused, and then go to the next affidavit relating to that particular accused so you can keep the evidence with regard to any given accused in a reasonably close compass, if you will agree to that course.

THE JUDGE ADVOCATE: How does that strike the defending officers? It seems to me extremely businesslike and fair, but you will be heard if you disagree.

(There was no objection from the defending officers)

THE JUDGE ADVOCATE: The only thing I am not clear on is are you going to put in the affidavits before the witnesses are called?

COL. BACKHOUSE: I was proposing to call the oral witnesses. It may be I will put an affidavit in between a witness. I propose to call first Brigadier Glyn-Hughes, and then put in an affidavit made by Col. Johnson, but that is a supplement to Brigadier Glyn-Hughes' evidence. I will, of course, try and call the live witnesses first.

There is one last thing I would like to do, and that is to virtually introduce the accused to you. They divide themselves into two classes, the first group are S.S. who were at Auschwitz as well as Belson. The first one is Josef Kramer, who was commandant at Auschwitz and subsequently commandant at Belson. You will hear that he joined the S.S. as a volunteer and has been a concentration camp guard all his service at one camp or another, gradually piling up. It may be, but I do not want to

go in detail in opening, that I shall ask to call evidence or put evidence before you of incidents which took place at other concentration camps if the Defence persist in a suggestion that what happened at Belsen was accidental and was not part of an organised series of events. It may be I shall ask permission to take evidence of the whole of Kramer's career. I will not open that evidence.

No. 2, Dr. Klein, a Rumanian. Dr. Klein joined the S.S. voluntarily, he joined the Waffen in June, 1943. He was a recruiting doctor in Cracow for a time and from December, 1943, onwards he has been in concentration camps. First of all he was at Auschwitz, and you will hear from witness after witness that he took part usually in the selection of victims for the gas chamber, and you will hear that he makes no secret of it, he admits it freely. He came to Belsen in the middle of February. His own story is he was only in the camp three days before the British arrived. That, unfortunately, does not agree with the evidence of other witnesses, not even of the Commandant, Kramer. You will hear he realised the conditions and realised what view any honest people finding that camp would take, and he will tell you - rather he has already stated that he told Kramer that the British on their arrival if they had any sense would put himself and Kramer against the wall and shoot them.

The next, Weinartner, was a block fuhrer of one of the womens' camps at Auschwitz. He had some 1,00 women under him. When he got to Belsen he again became a block fuhrer in Belsen. I am deliberately not going in detail through what is alleged against him.

Kraft was an S.S. guard at Auschwitz and again at Belsen where he had got his bread and ration store.

Hoessler was at Auschwitz and there he was a lagerfuhrer, that really means the head S.S. man under the Commandant in the camp. He joined the S.S. as a volunteer in January, 1943, because he was out of work, and had served in concentration camps the whole of the Nazi regime. He was in charge of the womens camp under Kramer. You will hear that after he left Auschwitz he went to another camp called Dora, and from Dora he came to Belsen, where he became lagerfuhrer of No. 2 camp.

The next one, Bormann, was in charge of the clothing store first of all and later of the working parties at Auschwitz, and you will hear from witness after witness how she took part both in the amusement of setting dogs on women and in the selections for the gas chamber. You will hear that when she came to Belsen she was in charge of the pig sty, where she continued her course of conduct.

No. 7, Elisabeth Volkenrath. She at Auschwitz regularly took part also in the selections for the gas chamber, and you will hear of the many personal cruelties which she inflicted on people. When she came to Belsen she was placed in charge of all women S.S. as the head woman in the camp by Kramer. You will no doubt come to the conclusion, when you hear of the various positions which those persons from Auschwitz took up at Belsen, that Kramer was very well satisfied with their behaviour at Auschwitz, and put them in authority when they got to Belsen. You will

hear again of her many cruelties at Belson.

No. 8, Ehlert, was an S.S. guard. She joined the S.S. on the 15th November, 1940. She claims to have been a conscript. You will hear that after a career in various concentration camps she eventually arrived in Belson, after a spell first of all in Auschwitz. She was the second in command of the women, and like so many others she considers that the conditions there were a shame and disgrace, but, of course, ~~were caused by everybody other than herself.~~

The next, Irma Grese, was the Commandant of working parties, and for a time was in command of the womens punishment quarter at Auschwitz. She has been described by some of the people as the worst woman in the camp, and there is not one type of cruelty which took place in that camp for which she has not been known as being responsible. She regularly took part in the selections for the gas chamber, made up punishments of her own, and when she came to Belson she carried on in precisely the same way. She too specialised in setting dogs on people. She has made three statements which vary interestingly. I will not go into the details of them now, but you will see how gradually the light comes to her when her memory returns, and she gives some very interesting accounts of her own antecedents.

The next one is Gura, who was a block fuhrer there. You will hear evidence of at least two murders by him there.

The next is Schreirer, who was in charge of block 230, a block fuhrer. There again you will hear evidence of his regular cruelty.

These are the S.S. members who were in Auschwitz. The remaining three persons charged in respect of Auschwitz are Ilse Lothe, No. 10, Lobauer, No. 11, and Storoska, No. 48. Those three were themselves prisoners. You will hear that they were referred to as Capos, which is a universal term applied to prisoners placed in authority, or as block attestors, or lager attestors. Lobauer was in charge of the womens working parties there, and you will hear that she was just as cruel in her treatment as any of the S.S. women and encouraged S.S. women to turn dogs on internees. Lobauer, No. 11, was the lager capos, that is to say, the leading woman prisoner in the camp. She took an active part in the selection of victims for the gas chamber and in many other cruelties. Lastly, No. 47, who was first of all a block attestor for one of the blocks and later lager attestor, and took an equal part in the cruelties. Those are the persons concerned with Auschwitz.

With regard to the others at Belson, I can take a group fairly quickly together. I do not propose to go into any detail about them beyond saying that these persons were all S.S. men in charge of or working in kitchens.

No. 12, Klippel, No. 16 Flrasich, No. 18 Mathes, No. 22 Pinchon, No. 28 Barsch, No. 31 Ilse Forster, No. 34 Ila Forster, No. 39 Haschke, No. 42 Lisiewitz, No. 44 Hempel. They all worked in the kitchens, and you will hear again how each and every one of these people behaved to the internees. If you ever had any doubt as to whether there was evidence of

concerted actions, when you have considered the way in which these persons behaved at each of those kitchens I shall suggest that the Court can no longer have the slightest doubt, because it could not be coincidence that each of those persons should behave in the same callous way.

The remaining S.S. men are two block fuhrers, 23 Otto, 47 Polanski, who was an assistant block fuhrer, and a number of what I might call miscellaneous administrative staff, 14 Schnitz, 21 Egersdorf, who was in charge of the bread store, 35 Opitz, who was in charge of a working party, 36 Charlotte Klein, 37 Bothe, 38 Frieda Walter, who was in charge of the garden, 40 Fiest, 41 Sauer, 45 Hahnel, who was in charge of the bath house, then there are two persons who came with the transport from Dora, an S.S. man, No. 19, Kalessen, and 31, Ostrowski, who was one of his Kapos. There were two more who came with the transport from Nordhausen, 25 Stoffel, who was in charge, 27 Dor, who was the second in command of that transport. You will hear something of their behaviour. Then in addition there were a number of Kapos, and the remainder may all be introduced as Kapos as one kind or another. No. 20 Burgraf, he was the block altester of No. 19 block, No. 29 Zoddell, lager altester of No. 1 camp, 30 Schlomoivioz, No. 31 I have already introduced as one of the two from Dora. When he came to Belsen he took up his position as block altester of block No. 19. No. 32 Aurdziej, block altester of block 12. No. 43, Roth, who was a lager altester. I think she was block altester of block 199. No. 46, Kopper, who was a block altester and later became camp policewoman. Those are all the personalities of the persons in the camp. I have deliberately avoided going into the details of what they did, but may I conclude my opening by saying again that if you are satisfied on this evidence that these conditions did exist in Belsen, that these conditions did exist in Auschwitz, then the Prosecution have amply made out a case against each one of those persons who you considered took an active part at either of those camps, however small it may be.

As in all cases, it is the duty of the Prosecution to prove the guilt of the accused beyond any reasonable doubt, and unless the Prosecution do fulfill that burden of proof then it will be your duty to acquit any one of these persons who you may be in doubt about, but if you are satisfied that they in fact acquiesced in and took part in the atrocities of which you will be told, that they created the conditions which you will see, insofar as they can be seen on a film, that they were responsible for the mass murders both at Belsen and at Auschwitz, then the Prosecution say they have made out their case and that the charges which have been put before you have been fully proved.

(At 1625 hours the Court adjourns until 1000 hours tomorrow morning, Tuesday, 18th September, 1945).